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9 **IN THE UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

11 KEN KUNZLER

12 Plaintiff,

13 v.

14 UNITED AGRI PRODUCTS, INC., UAP
15 DISTRIBUTION, INC., and DOES 1 through
16 25, inclusive,

17 Defendants.

18 CASE NO. C 07-03555 EMC

19 **FIRST AMENDED NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. §§ 1441, 1332 (DIVERSITY OF
CITIZENSHIP)**

20 Complaint Filed: May 2, 2007

21 Trial Date: None Set

22 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

23 PLEASE TAKE NOTICE that Defendants United Agri Products, Inc. and UAP
24 Distribution, Inc. (hereinafter collectively "UAP") hereby remove to this Court the state court
25 action described below and respectfully show upon information and belief:

26 1. On or about May 2, 2007, this action, entitled *Ken Kunzler v. United Agri Products,
27 Inc., UAP Distribution, Inc., and Does 1 through 25, inclusive* (Case No. SCUK CVPO 07-
99081), was commenced in the Superior Court of the State of California in and for the County of
Mendocino (hereinafter "the State Court Action"). A First Amended Complaint for Damages was
subsequently filed on June 25, 2007. True and correct copies of the Summons, Complaint for
Damages, second Summons, and First Amended Complaint for Damages by Kunzler are attached
as Exhibits "A," "B," "C," and "D," respectively, to the Declaration of Marisa M. Yee, filed

1 concurrently herewith. The only other document in the file of the State Court Action is a Notice
2 of Delay Reduction Rules and Case Management Conference, a true and correct copy of which is
3 attached as Exhibit "E" to the Declaration of Marissa M. Yee, filed concurrently herewith.

4 2. Counsel for UAP received an unsigned copy of the original Complaint for
5 Damages via electronic mail from counsel for Kunzler on June 12, 2007. A true and correct copy
6 of the electronic mail message and unsigned Complaint for Damages attached to the electronic
7 mail message are attached as Exhibit "F" to the Declaration of Marissa M. Yee, filed concurrently
8 herewith. The second Summons and First Amended Complaint for Damages were served on
9 Defendant UAP Distribution, Inc. on June 29, 2007¹. The Summons, Complaint for Damages,
10 second Summons, and First Amended Complaint for Damages have not formally been served on
Defendant United Agri Products, Inc. in connection with this matter.

11 3. This action is a civil action of which this Court has original jurisdiction over this
12 matter pursuant to 28 U.S.C. § 1332, thus making removal permissible under 28 U.S.C. §§
13 1441(a) and (b) and 1446, because it is a civil action between citizens of different states, and,
14 based on specific averments in the First Amended Complaint for Damages, UAP reasonably
15 believes that the amount in controversy exceeds the required jurisdictional amount (\$75,000),
16 including alleged actual damages. Specifically, Plaintiff claims an entitlement to \$194,310.00.
17 See Exhibit "C" ¶10."

18 4. According to the Complaint, Plaintiff Ken Kunzler is a resident and citizen of
19 California. See Exhibit "C" ¶1.

20 5. Both at the time of commencement of the State Court Action and at the time of the
21 filing of this First Amended Notice of Removal, Defendants United Agri Products, Inc. and UAP
22 Distribution, Inc. were and are corporations organized and existing under the laws of the State of
23 _____

24 1 The undersigned counsel was apprised of service of the second Summons and First
25 Amended Complaint on Defendant UAP Distribution, Inc. after filing the Notice of Removal on
July 10. The service of the second Summons and First Amended Complaint does not affect the
26 removability of this case. However, UAP is filing this First Amended Notice of Removal to make
27 sure that all facts concerning the service of the second Summons and First Amended Complaint
are presented accurately to the Court.

1 Delaware, and their principal places of business were and are in Greeley, Colorado. See
2 Declaration of Marisa Yee ¶¶ 2-5.

3 6. There have been no further proceedings in the State Court Action, and copies of all
4 documents filed in that matter are attached hereto.

5 7. Pursuant to 28 U.S.C. § 1446(d), UAP is serving a copy of this First Amended
6 Notice of Removal on all adverse parties, and will promptly provide notice of the filing of this
7 First Amended Notice of Removal to the Clerk of Court of the State of California, County of
8 Mendocino.

9 8. This First Amended Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b),
10 because it is being filed within thirty days of the receipt by counsel for UAP of a copy of the
11 initial pleading setting forth the claim for relief.

12 INTRA-DISTRICT ASSIGNMENT

13 9. Pursuant to Local Rules 3-2 and 3-5, this is a civil action that arose in the County
14 of Mendocino, California, and is being removed from the Superior Court of the State of California
15 for the County of Mendocino. Under Local Rule 3-2(d), this action may be assigned to the San
16 Francisco Division or to the Oakland Division.

17 16 WHEREFORE, Defendants United Agri Products, Inc. and UAP Distribution, Inc. pray
18 that the action now pending against them in the Superior Court of the State of California, in and
19 for the County of Mendocino, described above, be removed to this Court and proceeded therein.

20 21 Respectfully Submitted,

Dated: July 11, 2007

22 23 LEWIS BRISBOIS BISGAARD & SMITH, LLP

24 25 By:

26 27 
Shawn A. Toliver
Marisa M. Yee

28 29 Attorneys for Defendants United Agri Products, Inc.
and UAP Distribution, Inc.